REMARKS

Claims 1-19 are the pending claims being examined in the application. Claims 1, 10, 18 and 19 are independent. Claim 1-12, 18, and 19 have been amended. No new matter has been added. Reconsideration and further examination are respectfully requested.

Page 2 of the Office Action states, in the Response to Arguments section, that the claim language "during retrieval of a content file" is not clear and can "refer to the retrieval process in general and not necessarily refer only to the time when data of the content file are being transferred." In response, Applicant has amended independent claim 1 to state "a bandwidth measurement module executed by said processor for dynamically determining, during transfer of a content file over a network, a bandwidth of a network connection over which the content file is being retrieved." No new matter is presented. Applicant respectfully submits that the claim objection has now been overcome.

Claim 18 was objected to because it recites "'computer readable medium' which is not otherwise limited in the specification and could be open to interpretation such as signals." (Office Action, Pages 2-3). Without conceding the correctness of this objection, and solely to advance prosecution of the pending claims, Applicant amends claim 18. No new matter is presented. Support for this claim amendment is shown throughout the Specification and at least at Paragraphs [0017], [0036], and [0041]. As a result, Applicant respectfully requests that the objection to claim 18 be removed.

Claims 1-13 and 15-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,859,840 (Singal) in view of U.S. Publication No. 2001/0029523 (Mcternan) and in further view of U.S. Publication No. 2003/0016630 (Vega-Garcia); Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Mcternan and Vega-Garcia, and further in view of U.S. Publication No. 2004/0128343 (Mayer). Reconsideration and withdrawal of the rejections are respectfully requested for at least the following reasons.

Claim 1 recites a system comprising a mass storage device; a processor; a bandwidth measurement module executed by the processor for dynamically determining, during transfer of a content file over a network, a bandwidth of a network connection over which the content file is being retrieved; a download manager executed by the processor for retrieving, and storing in the mass storage device, a portion of the content file, the download manager determining a size of the portion to retrieve in response to the determination made by the bandwidth measurement

module; and a presentation manager executed by the processor for retrieving the portion of the content file from mass storage and displaying the portion with a media player application, wherein the download manager retrieves a remainder of the content file in response to the presentation manager displaying the retrieved portion of the content file.

Singal teaches delivering a media object to a user over a network, whereby the media object is divided into first portions and remaining portions. The first portions <u>are stored on an edge server</u> and the remaining portions <u>are stored on an origin server</u>, whereby the servers are in communication with the user. Upon receiving a request for delivery from a user, the edge server transmits the first portion of the media object to the user. The edge server then requests delivery of the remaining portions from the origin server.

Singal is directed to its server computers streaming data to its user. In particular, Singal states that a "prefix can be stored (cached) <u>on an edge server</u> and <u>streamed</u> to a user while the suffix is being fetched from an origin server." (Singal, col. 4, lines 25-30). Singal further states, in step 168 of Fig. 5, "Begin streaming video to the user." Thus, Singal describes a process in which data is streamed from one or more of its servers to a user.

Independent claim 1 recites, in part:

> a bandwidth measurement module executed by said processor for dynamically determining, during transfer of a content file over a network, a bandwidth of a network connection over which the content file is being retrieved;

The Office Action states that Singal discloses the above claim element in Fig. 5, col. 6, lines 50-67 and col. 7, lines 1-20. Applicant respectfully disagrees. These passages of Singal describe its servers determining the available bandwidth when streaming its media object. In particular, col. 6, line 65 of Singal states that the available bandwidth is examined and the transfer rate is reserved. Thus, Singal describes examining the bandwidth before streaming its media object. Singal does not teach or suggest dynamically determining during retrieval of a content file a bandwidth of a network connection over which the content file is being retrieved, as claimed in independent claim 1.

Independent claim 1 also recites, in part:

> a download manager executed by said processor for retrieving, and storing in the mass storage device, a portion of the content file, the download manager determining a size of the portion to retrieve in response to the determination made by the bandwidth measurement module;

The Office Action states that the above claim element is described in Singal at Fig. 5, col. 6, lines 50-67, and col. 7, lines 1-20. As stated above, these passages and Figure of Singal describes its servers determining what to stream to Singal's users. Applicant respectfully submits that Singal does not teach or suggest a download manager executing on a client computer for retrieving, and storing in a mass storage device a portion of a content file, the download manager determining a size of the portion to retrieve in response to the determination made by the bandwidth measurement module, as claimed in independent claim 1. Singal's user computer does not determine a size of the data that is being streamed from Singal's edge server. Singal's processing occurs on Singal's servers and Singal does not describe such a determination by its client computers, as claimed in independent claim 1.

Further, Singal does not teach or suggest its user computer storing in a mass storage device Singal's prefix. Instead, Singal describes its user computer streaming the media object from Singal's edge servers. As a result, the data is played once this data is received from Singal's servers. Independent claim 1, however, states a download manager which stores in a mass storage device a portion of the content file. Applicant respectfully submits that the above claim element is not disclosed in Singal.

Independent claim 1 also recites, in part:

> wherein the download manager retrieves a remainder of the content file in response to the presentation manager displaying the retrieved portion of the content file.

The Office Action refers to Figure 5, col. 6, lines 50-67, and col. 7, lines 1-20 of Singal as disclosing this feature. It is respectfully submitted that these passages and Fig. 5 of Singal do not, however, disclose this feature. Specifically, Fig. 5 of Singal as well as col. 6, lines 50-67 and col. 7, lines 1-20 of Singal disclose querying for available bandwidth in step 158 if a media object is unavailable. After the querying, Singal computes a prefix size (step 160) and then loads the data in step 162. Singal continues, "the media suffix is loaded in parallel, and the media object is streamed to the user (step 168). While steps 166 and 168 are shown in a sequential order, streaming in step 168 may also begin before or concurrently with step 166." (Col. 7, lines 4-9) (emphasis added).

Singal discloses loading its media suffix and streaming the media object as two independent steps that may occur sequentially or concurrently. This is not the same as a presentation manager retrieving a portion of the content file and displaying the portion with a

media player application and then the download manager retrieving a remainder of the content file in response to the presentation manager displaying the retrieved portion of the content file, as claimed in independent claim 1. There is no retrieval of a remainder of a content file <u>in response to the displaying of a (previously) retrieved portion of the content file</u>, as claimed in independent claim 1.

Singal discloses its media suffix loaded in parallel with its prefix and then streaming video to its user. Loading suffix data in parallel is not the same as retrieving a remainder of a content file in response to a presentation manager displaying the retrieved portion of the content file, as claimed in independent claim 1. Fig. 5 of Singal describes steaming videos to Singal's user in step 168 as the last step that Singal's server performs. Fig. 5 of Singal does not describe retrieving a remainder of the content file in response to the displaying of a previously retrieved portion of the content file, as claimed in independent claim 1. Even though sequential steps are shown in Fig. 5, this does not mean that these steps occur in response to a previous step. For example, step 168 of Fig. 5 of Singal may occur ten minutes or one hour after step 166 of Fig. 5. Fig. 5 of Singal does not state that step 168 occurs in response to one or more previous steps.

Mcternan does not cure the deficiencies of Singal. Mcternan teaches systems and methods that allow the efficient distribution of rich media to clients by maximizing the use of available bandwidth and client processing capabilities. A rich media presentation is divided into discrete components, and a producer of the presentation specifies how a presentation is to be assembled and where resources needed for the presentation are to be found. This information is packaged into a data structure and sent to clients. Clients use this data structure to retrieve the necessary resources for the presentation. Producers are able to prioritize the particular resources that form part of the ultimate presentation according to their importance in the presentation, and clients can retrieve the resources most suitable for their capabilities, including processing power, graphics production speed, and bandwidth. A benchmarker routine running on the client helps identify these capabilities just before retrieval of the presentation components, to more closely assess the conditions under which the client will retrieve, assemble and present the desired show.

Applicant submits that Mcternan's system for accounting for variations in client capabilities in the distribution of a media presentation does not teach, suggest or disclose the claimed subject matter of amended independent claim 1. In particular, Mcternan does not teach or suggest a bandwidth measurement module executed by said processor for dynamically

determining, during transfer of a content file over a network, a bandwidth of a network connection over which the content file is being retrieved; a download manager executed by said processor for retrieving, and storing in the mass storage device, a portion of the content file, the download manager determining a size of the portion to retrieve in response to the determination made by the bandwidth measurement module; and a presentation manager executed by said processor for retrieving the portion of the content file from mass storage and displaying the portion with a media player application, wherein the download manager retrieves a remainder of the content file in response to the presentation manager displaying the retrieved portion of the content file, as recited in independent claim 1.

Further, Vega-Garcia does not cure the deficiencies of Singal and Mcternan. Vega-Garcia discloses a method and system for dynamically altering the transmission settings of one or more computing devices engaged in a real-time communication session. The devices exchange meaningful and dummy control packets according to a standard control protocol. The approximate bandwidth available on the network is then calculated based on the difference in arrival times between at least one of the dummy control packets and at least one of the meaningful control packets. Once the approximate bandwidth available on the network is computed, the one or more devices adjust outgoing audio and video data streams using a quality control mechanism. The quality control mechanism enables the one or more devices to transmit data in a way that maximizes the user experience during the real-time communication session.

Vega-Garcia does not, however, disclose the claim elements recited in amended independent claim 1. As a result, Claim 1 is patentable over Singal, Mcternan, and Vega-Garcia, and Applicant respectfully requests that the Examiner withdraw the rejection. Nor could Singal, Mcternan, and Vega-Garcia, alone or in combination with any other reference of record, render Claim 1 obvious, as no such combination would yield all of the elements in the presently recited claims. Therefore, Singal, Mcternan, and Vega-Garcia cannot form the basis of a proper § 103 rejection and a combination with other references would not form the basis of a proper § 103 rejection. Therefore, Applicant respectfully requests withdrawal of these rejections.

For at least the foregoing reasons, Claim 1 and the claims that depend from Claim 1 are believed to be in condition for allowance. In addition, for at least the same reasons, Claims 10, 18, and 19 are believed to be in condition for allowance; thus, the claims that depend from Claims 10 are also believed to be in condition for allowance. In view of the foregoing, the entire

application is believed to be in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Claim 14 was rejected under 35 U.S.C. §103(a) as being unpatentable over Singal in view of Mcternan and Vega-Garcia, and further in view of Mayer. Claim 10, from which Claim 14 depends, claims similar features to claim 1. It is respectfully submitted that Mayer does not remedy the deficiencies noted above with respect to claim 1. Therefore, Applicants submit that a combination of Singal, Mcternan, Vega-Garcia, and Mayer would not yield all of the elements in the presently cited claims, and therefore the combination cannot form the basis of a proper obviousness rejection.

Having responded to all objections and rejections set forth in the outstanding Office Action, it is submitted that the currently pending claims are in condition for allowance and Notice to that effect is respectfully solicited. Additional characteristics or arguments may exist that distinguish the claims over the prior art cited by the Examiner, and Applicant respectfully preserves their right to present these in the future, should they be necessary. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicant's undersigned representative.

The Applicant's attorney may be reached by telephone at 212-801-9220. All correspondence should continue to be directed to the address given below, which is the address associated with Customer Number 76058.

The Commissioner is hereby authorized to charge any required fee in connection with the submission of this paper, any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 50-1561. Please ensure that the Attorney Docket Number is referenced when charging any payments or credits for this case.

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Respectfully submitted,

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